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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,106	11/15/1999	CHARLES S. TAYLOR	GUID-003DIV2	2546

7590

02/27/2002

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EXAMINER

NASSER, ROBERT L

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 02/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/440,106Applicant(s)
Taylor et alExaminer
Robert NasserArt Unit
3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Aug 29, 2001

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-22 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-22 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

18) ☒ Interview Summary (PTO-413) Paper No(s). 3

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

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The examiner notes that the preliminary amendment requested that claims 25-32 be canceled and claims 33-40 be entered. However, the only claims previously of record in this application were claims 1-14. Accordingly, claims 1-14 are still pending and claims 33-40 have been renumbered as claims 15-22. Applicant should confirm this in response to this action.

Claims 15-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5727969 in view of Wright et al. The previous claims do not recite attaching the suction housing to a stable object. This is clearly taught by Wright et al. Therefore, it would have been obvious to modify the previous invention to use such a fixation system, to better ensure heart stability.

Claim 16 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5727969 in view of the Roux et al article entitled "New Helper Instrument in Cardiac Surgery." The previous claims do not recite attaching the suction housing to a stable object. Roux et al shows a device to stabilize the heart which attaches the stabilizer to a retractor to hold the heart still. Therefore, it would have been obvious to modify the previous invention to use such a stabilizing step, so as to ensure heart immobilization.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

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has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-22 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wright et al, noting that the housing is dome shaped.

Claim 1-14 and 16 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Borst et al.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borst et al in view of Wright et al. Wright shows a dome shaped pressure applicator. It would have been obvious to modify Borst to replace the paddle with the dome shaped paddle, as it is merely the substitution of one known equivalent for another.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser Jr. whose telephone number is (703) 308-3251. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 8:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cary O'Connor, can be reached on (703) 308-2701. The fax phone number for this Group is (703) 308-0758.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [cary.o'connor@uspto.gov].

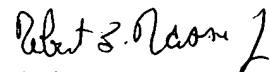
All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive

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information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

RLN
February 1, 2002


ROBERT L. NASSER
PRIMARY EXAMINER